

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

SYBRON DENTAL SPECIALTIES, INC.,

and

METREX RESEARCH CORPORATION,

Plaintiffs,

vs.

EVANSTON INSURANCE COMPANY,

Defendant.

Case No.: _____

NOTICE OF REMOVAL

Evanston Insurance Company ("Evanston") is a defendant in an action filed by the plaintiffs in the Circuit Court of Milwaukee County, Wisconsin, Case No. 09CV008387 (herein after referred to as the "State Court Action"). Evanston files this Notice of Removal of the State Court Action to this Court, and in support thereof, states as follows:

1. On or about the 1st day of June, 2009, an action was commenced against the above named defendant in the Circuit Court for the State of Wisconsin, in and for the County of Milwaukee, entitled *Sybron Dental Specialties, Inc., et al. v. Evanston Insurance Company*, Case No. 09-CV-8387 by filing of a Summons and Complaint with the Clerk of Circuit Court in Milwaukee County, a copy of which is attached hereto as Exhibit A.

2. Evanston first received a copy of the Summons and Complaint on June 2, 2009.

3. The above described action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1441.

4. Sybron Dental Specialties, Inc. ("Sybron") is a Delaware corporation with its principal place of business located in Orange, California.

5. Metrex Research Corporation ("Metrex") is a Wisconsin corporation with its principal place of business located in Orange, California.

6. Evanston is an insurance company organized in the state of Illinois with its principal place of business in Deerfield, Illinois.

7. Complete diversity of citizenship exists.

8. The amount in controversy exceeds \$75,000. (See Complaint.) Sybron and Metrex were defendants in a toxic tort action filed in Illinois, Cook County Case No. 02L498. (Compl. ¶ 8.) Metrex allegedly incurred over \$295,000 in legal fees defending that case. (Compl. ¶ 9.)

9. Metrex is a subsidiary of Sybron. (Compl. ¶ 6.) Evanston issued a policy of insurance, policy no. SP-804125, to Sybron in 2001, which named Sybron and Metrex as insureds under the policy. (Compl. ¶ 6.)

10. Sybron and Metrex allege that under the Evanston policy, Evanston was to pay for the cost of Metrex's defense in excess of the \$100,000 deductible. (Compl. ¶ 7)

11. Sybron and Metrex allege that Evanston has breached the contract of insurance by refusing to reimburse for the costs of defense in excess of \$100,000. (Compl. ¶¶ 11-14.)

12. Because complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000, the State Court Action is removable to this Court pursuant to 28 U.S.C. § 1332.

13. Thirty (30) days have not elapsed since Evanston first received a copy of the Complaint. This removal is therefore timely pursuant to 28 U.S.C. § 1446.

14. Concurrent with the filing of this Notice of Removal, Evanston is filing its Notice of Filing of Removal with the Circuit Court of Milwaukee County, Wisconsin.

WHEREFORE, defendant, Evanston Insurance Company, requests that the above action now pending against it in the Circuit Court for the State of Wisconsin for Milwaukee County, be removed to the United States District Court for the Eastern District of Wisconsin.

Dated this 30th day of June, 2009.

Respectfully submitted,



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EXHIBIT A

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

09CV008387

SYBRON DENTAL SPECIALTIES, INC.,
a foreign corporation,
1717 W. Collins Ave.
Orange, CA 92867

and

Case No. _____

Case Type: 30303

METREX RESEARCH CORPORATION,
a Wisconsin corporation,
1717 W. Collins Ave.
Orange, CA 92867,

Plaintiffs

v.

EVANSTON INSURANCE COMPANY,
an Illinois insurance company,
10 Parkway N
Deerfield, IL 60015-2526,

Defendant.

FILED
0 JUN 01 2009 0
JOHN BARRETT
Clerk of Circuit Court

COMPLAINT

Plaintiffs, Sybron Dental Specialties, Inc. and Metrex Research Corporation, by their attorneys, Halling & Cayo, S.C., for their complaint against the Defendant allege the following:

NATURE OF THE ACTION

1. This is an action for recovery under the defense provisions of an insurance policy issued to the Plaintiffs by the Defendant.

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THE PARTIES

2. Plaintiff Sybron Dental Specialties, Inc. (hereafter, "Sybron Dental") is a Delaware corporation having its principal place of business at 1717 W. Collins Ave., in the city of Orange, California. For purposes of insurance coverage at issue herein, it is the successor in interest to Sybron Corp. NY, Sybron Corp. Del., and Sybron Transition Corp.

3. Plaintiff Metrex Research Corporation ("Metrex") is a Wisconsin corporation having its principal place of business at 1717 W. Collins Ave., in the city of Orange, California. It is a subsidiary of Sybron Dental Specialties, Inc..

4. On information and belief, defendant Evanston Insurance Company is an insurance company organized in the state of Illinois, having its principal place of business at 10 Parkway N, Deerfield, Illinois.

BACKGROUND FACTS

5. Metrex is, and at all times relevant hereto has been, a manufacturer and/or seller of disinfectant products used by the medical and dental industries.

6. On behalf of itself and various subsidiaries, including Metrex, Sybron procured a claims-made liability policy in 2001 through an insurance agency in Milwaukee, Wisconsin. That policy, No. SP-804125, was issued to Sybron Dental and its subsidiaries, including Metrex, and covered claims made against one or more of the insureds during the policy period, December 11, 2001 to December 11, 2002. The Declaration sheet of the policy provided that the coverage was subject to a Completed Operations Deductible in the amount of \$100,000 which was "[a]pplicable to each occurrence, including claim expenses."

7. Based upon the language of the insurance policy and the customary practice in the insurance industry, Sybron understood that claim expenses, which included the costs of defense, would be picked up by Evanston once Sybron or its subsidiary had paid defense costs in excess of the deductible (or self-insured retention as it is elsewhere referred to in the policy) amount of \$100,000 in a given case.

8. In early 2002, Metrex, Sybron Corp. NY, Sybron Corp. Del., and Sybron Transition Corp. were named as defendants in a case filed in Illinois, *Liesse, et al. v. AGA AB, et al.*, Cook County Case No. 02 L 498 (hereafter, "the *Liesse* lawsuit"), alleging injury from exposure to ethylene oxide manufactured by the Plaintiffs and other companies

9. The *Liesse* lawsuit ultimately concluded in March of 2007, by which time Metrex had incurred in excess of \$295,000 in legal fees defending the case. Once the costs had exceeded \$100,000, Sybron had put Evanston on notice of that fact.

10. Notwithstanding the fact that expense costs related to the *Liesse* lawsuit exceeded \$100,000, and that the Plaintiffs duly put Evanston on notice of that fact, Evanston has refused to reimburse the Plaintiffs.

COUNT 1: BREACH OF INSURANCE CONTRACT

11. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

12. Plaintiffs have performed all of their obligations under the insurance policy.

13. By failing to reimburse the Plaintiffs for the costs over and above \$100,000 which were incurred in defense of the *Liesse* case, Evanston breached the contract of insurance.

14. The Plaintiffs have suffered damages as a result of the above-mentioned contract breach by the Defendant, including the difference between the amount of defense costs and the amount of the deductible or self-insured retention of \$100,000.

WHEREFORE, Plaintiffs demand judgment against the Defendant in the amount by which the defense costs in the *Liesse* case exceeded the amount of \$100,000, plus statutory interest, costs, and such other relief as the court may deem appropriate.


JURY DEMAND

Plaintiffs hereby demand and request trial by jury of all issues raised that are triable by jury.

Dated: June 1, 2009.

HALLING & CAYO, S.C.

By:


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